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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,215	11/18/2003	Steve Gelpman	14572P-067410US	6035
20350 7590 02/08/2007 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER MAI, TRI M	
			ART UNIT 3781	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/08/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/717,215

Applicant(s)

GELPHMAN, STEVE

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

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1. Claims 1, 2, 5, 7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Menetrier (4750654), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Menetrier in view of McArthur (4883207). Menetrier teaches a bag, a body comprising a curved side (note that the back of the bag curves to conforming to the user as claimed), side straps that are capable of being carried as claimed.

To the degree it is argued that Menetrier is not capable of carrier by a user such that the contour panel curves toward the hip of the user. McArthur teaches that it is known in the art to provide strap at 32 enabling the backpack to be carried as a brief case with the contour panel curves toward the hip of the user. It would have been obvious to one of ordinary skill in the art to provide the strap enabling the backpack to be carried as a brief case to enable one to carry the bag in different positions.

Regarding claim 7, note the cavities at portion 8.

2. Claim 6, and 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menetrier in view of Dausien (5366126). Dausien teaches that it is known in the art to provide through holes to save material and/or for venting. It would have been obvious to one of ordinary skill in the art to provide through holes to save material and /or to provide venting.

Regarding claim 17, Menetrier teaches a plurality ridges including vertical and horizontal ridges 14, 12. To provide through holes between the ridges would have been obvious to provide the desired place for the holes. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide through holes between the ridges, since it is well known art to rearrange parts of an invention involves only routine skill in the art, see *In Re Japikse*, 86 USPQ 70 (CCPA) 1950.

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Regarding claim 10 it would have been obvious to one of ordinary skill in the art to provide the radius of such curvature to enable to provide the curve to the panel.

Regarding claim 12, it would have been obvious to one of ordinary skill in the art to provide the panel with the height of 9.5 inches to provide the desired size for the panel.

Regarding claim 18, note that the term "briefcase" does not impart in any structure of the container of Menetrier. In other words, it is capable of containing paper folders or briefs.

3. Claims 1, 2, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of Brown (5010988). Baker teaches bag with reinforcing support being flexible. Baker meets all claimed limitations except for the reinforcing support being a rigid curved plastic. Brown teaches that it is known in the art to provide a rigid plastic 32. It would have been obvious to one of ordinary skill in the art to provide a the rigid plastic reinforcing support to provide additional rigidity.

4. Claims 6, 9-10, and 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Baker rejection as set forth above, and further in view of Dausien. Dausien teaches that it is known in the art to provide through holes to save material and/or for venting. It would have been obvious to one of ordinary skill in the art to provide through holes to save material and /or to provide venting.

Regarding claim 6, note portion 32 has two layers and horizontal ridges therebetween in Figs. 2 and 10. In the combination with Dausien, the holes will inherently be placed between the multitude of ridges as claimed. Furthermore, note the cavities between the ridges.

5. Claims 1, 2, 4, 5, 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of Menetrier, and further in view of Brown (5010988). Baker teaches bag having

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a curved sidewalls and flexible reinforcement. Baker meets all claimed limitations except for the reinforcement being rigid. Menetrier teaches that it is known in the art to provide a rigid reinforcement adapted to curve to the contour of the user. It would have been obvious to one of ordinary skill in the art to provide the reinforcement of Menetrier with the foam layer to provide added rigidity. Brown provides further evidence that it is known in the art to provide a rigid reinforcement for such a bag by the teaching of provide a rigid panel 32 on such type of a case.

6. Claims 1, 2, 4-6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ive (5492256). Ive teaches a bag with a shoulder strap 18, a rigid curved plastic panel 64 contour panel adjacent the curved side of the body and a foam portion 63 adjacent the panel wall 64.

7. Applicant's arguments, along with the declaration have been fully considered but they are not persuasive. With respect to the Menetrier reference, applicant asserts that the bag in Menetrier is not configured to engage the hip of the user. It is noted that the claim recites "capable of being carrier by a user" and "configured to engage the hip". The examiner submits that these are limitations, the bag in Menetrier is capable of carried horizontally by one strap as claimed so that the curved side of the body can engage the hip as claimed. Furthermore, note that the term hip is a generally broad area on the body. Carry the bag by one shoulder strap so that it would slingable would enable the bag curved portion to engage the hip as well.

*of Priya Sharma*

The declaration under 37CFR 1.132 has also been considered. It is noted that the declaration fails to establish a nexus with the claimed invention. The declaration disclose a brief device which briefly mention about a contour panel among other thing. There is no evidence that the success was due to the presence of the contour panel as claimed. Furthermore, there is no mention of the success of the device due to the specificities of the claimed invention as

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distinguished from the prior art invention. In this case, the brief mention of a contour panel does not establish its success over the prior art devices. Note that Baker also teaches a contour panel. A brief search at Kensington.com reveals that the contour panels can be used for other devices including notebook rollers and backpacks. Thus, it adds to the evidence that to provide a contour panel for different types of bags are.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai  
Primary Examiner  
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